

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**AMERICANS FOR IMMIGRANT JUSTICE,  
INC.,**

**Plaintiff,**

**V.**

**UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY and UNITED  
STATES IMMIGRATION AND CUSTOMS  
ENFORCEMENT,**

**Defendants.**

## CIVIL ACTION

**No. 1:19cv21156**

## COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, seeking disclosure of records concerning the enforcement operations, activities and policies of the United States Immigration and Customs Enforcement (“ICE”), a division of the United States Department of Homeland Security (“DHS”), related to the mental health services available to immigrants detained in ICE facilities located in Florida.

2. Americans for Immigrant Justice, Inc. (“AI Justice”) seeks declaratory, injunctive and other appropriate relief with respect to Defendants’ unlawful withholding of the requested records.

3. ICE is responsible, among other duties, for enforcing immigration laws in the interior of the country and has authority to identify, arrest, and in certain cases, remove individuals who are determined to have entered the United States illegally. Through its office of

Enforcement and Removal Operations (ERO), ICE detains and manages individuals in custody until a final decision of removability or releasability is made by an immigration judge.

4. ICE routinely contracts with private prison companies, including The GEO Group, Inc. (“GEO”), to carry out and manage its detention responsibilities. Additionally, ICE and GEO further contract with medical service providers, including the Atlantic Shores Hospital (“ASH”) in Fort Lauderdale, Florida, to provide certain medical and mental health services to ICE detainees.

5. AI Justice attorneys conduct weekly “Know Your Rights” presentations at detention facilities operated by ICE and GEO, including the Broward Transitional Center (“BTC”). BTC is a for-profit detention center located in Pompano, FL, owned and operated by GEO under a twenty million dollar plus annual contract with ICE. These attorneys interview hundreds of detained immigrants every year and directly represent dozens of them, many serious trauma survivors requiring acute mental health services.

6. Since 2015, many detainees interviewed and/or represented by AI Justice who have received mental health services have reported abusive and unlawful treatment. Such treatment includes excessive physical restraints – hand-cuffs, waist-chains or otherwise – nearly 24-hours per day, except while bathing, and including while receiving therapy/counseling from medical staff. Additionally, detainees describe being subjected to excessive and inappropriate visual and other monitoring, including while sleeping, often having two GEO guards in their room during nights.

7. Based on these pervasive and continued reports, AI Justice submitted a FOIA request to ICE in January 2017, seeking records related to ICE contracts for medical and mental health services provided to detainees, as well as to policies relating to restraining and

monitoring detainees. Exhibit A, FOIA Request dated January 16, 2017. ICE failed to respond to AI Justice's FOIA request in a timely manner.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over the subject matter of this Complaint and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331 and 1361. The Court's review of this matter is *de novo*.

9. Venue is proper in this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because Plaintiff AI Justice's principal place of business is located in the Southern District of Florida.

10. Declaratory and further necessary and appropriate relief is authorized pursuant to 28 U.S.C. §§2201-2202 and Rule 57, Federal Rules of Civil Procedure, Fed. R. Civ. P. 57.

11. Plaintiff AI Justice has exhausted any and all administrative remedies in connection with its FOIA request and appeal.

### **PARTIES**

12. Plaintiff AI Justice is a non-profit organization with its principal place of business located at 6355 NW 36th Street, Suite 2201, Miami, FL 33166. AI Justice is a legal assistance organization dedicated to promoting the basic human rights of immigrants of all nationalities through public education, advocacy, and impact litigation since 1996. AI Justice champions the rights of unaccompanied immigrant children, advocates on behalf of victims of domestic violence and human trafficking, serves as a watchdog on immigration detention practices and policies, and speaks for immigrants who have particular and compelling claims to justice.

13. Defendant DHS is a department of the executive branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f). DHS is responsible for enforcing federal immigration laws. DHS has possession and control over the records sought by AI Justice.

14. Defendant ICE is a component of DHS and is an agency within the meaning of 5 U.S.C. § 552(f). Among other duties, ICE is responsible for enforcing immigration laws throughout and in the interior of the United States, including detaining non-citizens who enter without authorization and operating detention facilities for that purpose. ICE has possession and control over the records sought by AI Justice.

#### **STATEMENT OF FACTS**

15. On January 16, 2017, AI Justice submitted a FOIA request to ICE seeking:

[D]isclosure of any and all records that were authored, prepared, received, collected and/or maintained by or transmitted to the U.S. Department of Homeland Security (DHS) and/or U.S. Immigration and Customs Enforcement (ICE) that describe, refer or relate to DHS and/or ICE's contractual or other relationship with the Atlantic Shores Hospital (ASH) located in Fort Lauderdale, FL and/or the GEO Group, Inc. (GEO) relating to any detention or processing facility located in Florida.

*See Ex. A.*

16. The FOIA request identified ten separate categories of records sought and specified a relevant time period of documents dated between January 2010 and December 2016, inclusive. *See Ex. A.*

17. The requested documents fall into three main categories of information maintained by and in the possession of DHS and ICE, relevant to: (1) DHS/ICE contracts for medical and/or mental health care services at facilities located in Florida; (2) policies regarding physically restraining or monitoring DHS/ICE detainees held at facilities located in Florida or transported to ASH; and (3) documents regarding the referral process and number of DHS/ICE

detainees referred to, transported to, treated, and/or hospitalized at ASH and the length of stay/hospitalization.

18. Each sub-section of the FOIA request reasonably described the category of records sought and included sufficient information to allow ICE to conduct a reasonable search for responsive documents, as required by 5 U.S.C. § 552(a)(3)(A). *See* Exhibit A at 2-3. AI Justice's FOIA request also sought a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(iii). *Id.* at 3-4

19. On February 8, 2017 AI Justice received an acknowledgment letter confirming receipt of its FOIA request and was advised that ICE was invoking a permissible ten-day extension within which to respond, due to the high volume of FOIA requests received at that time. Exhibit B, ICE acknowledgment letter dated February 8, 2017. AI Justice was further informed that its fee waiver request had been denied. *Id.*

20. More than six months since the expiration of the extended response date passed with no response to AI Justice's FOIA request from ICE, in violation of FOIA. 5 U.S.C. § 552(A)(6)(B)(i).

21. On September 28, 2017, after several status inquiries from AI Justice, AI Justice finally received ICE's response to the FOIA request, referred to as a "final" response despite not having issued any prior response. Exhibit C, ICE response letter dated September 28, 2017. However, the response consisted of a single sub-section of an unidentified document dated in 2013, entitled "Statement of Objectives" that ICE determined was the only information responsive to AI Justice's extensive FOIA request.

22. Due to ICE's untimely response, failure to conduct a reasonable search for

responsive documents, and resulting lack of a meaningful production, AI Justice filed an administrative appeal on December 15, 2017. Exhibit D, Notice of Appeal dated December 15, 2017.

23. The ICE Office of the Principal Legal Advisor (“OPLA”) issued an acknowledgment notice on December 18, 2017 but advised of a backlog. Exhibit E, ICE OPLA appeal acknowledgment dated December 18, 2017.

24. On January 16, 2018, AI Justice received ICE OPLA’s “final” response to its appeal. Exhibit F, ICE OPLA final appeal response dated January 16, 2018. Confirming ICE’s failure to conduct a reasonable search for responsive documents, the appeal response indicated that “[a]fter a review of the administrative record, ICE has determined that new searches or modifications to the existing searches could be made [and] therefore remanding your appeal to the ICE FOIA Office for processing and re-tasking to the appropriate agency/office(s) to obtain any responsive documents. The ICE FOIA Office will respond directly [].” *Id.*

25. On March 21, 2018 AI Justice inquired into the status of the remand response, but has not received any substantive response from ICE. Exhibit G, AI Justice remand status inquiry to ICE dated March 21, 2018.

26. On March 27, 2018, the ICE FOIA Office merely responded that the “request is still active and not all program office[s] have responded with responsive documentation.” Exhibit H, ICE status response dated March 27, 2018.

27. On April 10, 2018, AI Justice inquired whether a “FOIA manager” would be assigned to process its request, as ICE previously proposed, but AI Justice received no response from ICE. Exhibit I, AI Justice status inquiry to ICE dated April 10, 2018.

28. AI Justice also received no response to two status inquiries submitted to

ICE in July and August 2018. Exhibit J, AI Justice status inquiry to ICE dated July 25, 2018; Exhibit K, AI Justice status inquiry to ICE dated August 7, 2018.

29. ICE's untimely response to AI Justice's FOIA request, failure to conduct a reasonable search, despite acknowledging the need to conduct such search (*see* Ex. F), and continued failure to produce the requested records violate the FOIA and is impeding AI Justice's efforts to educate the public about ICE operations in general and to inform the immigration bar regarding ICE's detention practices and policies in particular. Further, ICE is hindering AI Justice's ability to effectively advocate for justice and fairness for immigrants subject to these abusive and excessive practices.

30. As of the date of the filing of this Complaint, AI Justice has received no substantive response since ICE OPLA remanded AI Justice's appealed FOIA request back to the ICE FOIA Office for processing and re-tasking over a year ago, as of January 16, 2018. *See* Exhibit F.

31. AI Justice has exhausted administrative remedies as ICE failed to timely respond to the FOIA request and appeal as required by 5 U.S.C. § 552(a)(6)(C)(i). *See also, e.g. Ruotolo v. Dep't of Justice*, 53 F.3d 4.8 (2d Cir. 1995) ("[A]dministrative remedies are 'deemed exhausted' if the agency fails to comply with the 'applicable time limit' provisions of the FOIA.").

### **FIRST CAUSE OF ACTION**

#### **Violation of the Freedom of Information Act for Failure to Respond Within the Time Required**

32. AI Justice repeats, alleges and incorporates the allegations in paragraphs 1-31 as if fully set forth herein.

33. The FOIA requires agencies to determine within twenty days of a request

for records whether the agency will comply with the request, and immediately notify the requester of the agency's decision, the reasons therefore, and appeal procedures for adverse determinations. 5 U.S.C. § 552(a)(6)(A)(i).

34. The FOIA further requires agencies to make a determination with respect to any appeal within twenty days after the receipt, and if the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination. 5 U.S.C. § 552(a)(6)(A)(ii).

35. A requestor is deemed to have exhausted administrative remedies if the agency fails to comply with the applicable time limit provisions. 5 U.S.C. § 552(a)(6)(C)(i).

36. This Court has jurisdiction to enjoin an agency from withholding agency records and to order the production of agency records improperly withheld, after determining the matter *de novo*. 5 U.S.C. § 552(a)(4)(B).

37. Plaintiff AI Justice properly submitted a request to Defendant ICE for records under the FOIA and established that any applicable fees should be waived.

38. More than six months passed with no response to AI Justice's FOIA request from ICE, in violation of FOIA.

39. AI Justice further submitted an appeal to ICE regarding its FOIA request and has received no response for over twelve months, in violation of the FOIA.

40. Defendants have violated the applicable statutory time limit for processing of FOIA requests and appeals thereof.

## **SECOND CAUSE OF ACTION**

### **Violation of the Freedom of Information Act for Failure to Conduct a Reasonable Search and Disclose Responsive Records**

41. AI Justice repeats, alleges and incorporates the allegations in paragraphs



1-40 as if fully set forth herein.

42. Defendants are obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for and to produce records responsive to AI Justice's FOIA request, and to promptly produce them.

43. ICE has not conducted a reasonable search for records responsive to AI Justice's FOIA request.

44. On January 16, 2018, ICE acknowledged its failure to conduct a reasonable search for responsive documents and instructed the request to be processed and re-tasked. *See* Ex. F. Since that time, more than one year ago, AI Justice has not received any substantive communication or production from ICE.

45. Defendants' continued failure to conduct a reasonable search for records responsive to AI Justice's FOIA request and to disclose and release responsive records violates 5 U.S.C. § 552(a)(3)(A), (a)(3)(C) and (a)(6)(A), as well as regulations promulgated thereunder.

46. AI Justice has a legal right to obtain such records, and no legal basis exists for Defendants' failure to search for and disclose them.

47. Injunctive relief is authorized under 5 U.S.C. § 552(a)(4)(B) because Defendants continue to improperly withhold agency records in violation of the FOIA. AI Justice will suffer irreparable injury from, and has no adequate legal remedy for, Defendants' illegal withholding of government documents. Unless enjoined by this Court, ICE will continue to violate AI Justice's statutory rights to receive records under FOIA as it has done for over two years.

### **THIRD CAUSE OF ACTION**

#### **Defendants Failed to Grant Plaintiffs Public Interest Fee Waiver Request**

48. AI Justice repeats, alleges and incorporates the allegations in paragraphs 1-47 as if fully set forth herein.

49. FOIA requires that each agency promulgate regulations specifying the schedule of fees to be charged for processing a FOIA request. The Act further establishes procedures and guidelines for determining when such fees should be waived or reduced. 5 U.S.C. § 552(a)(4)(A)(i).

50. An agency's fee regulations under FOIA must provide that fees will be limited to reasonable standard charges for document search and duplication when records are neither requested for commercial use, nor requested by an educational or scientific institution or member of the news media. 5 U.S.C. § 552(a)(4)(ii)(II).

51. These regulations must provide that documents "shall be furnished without any charge or at a charge reduced below the fees established . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor." 5 U.S.C. § 552(a)(4)(A)(iii).

52. Defendants denied AI Justice's public interest fee waiver (*see* Ex. B). In its Notice of Appeal, AI Justice appealed this denial (*see* Ex. D), however, ICE asserted in its January 16, 2018 letter that "this issue is not properly on appeal as no adverse determination was made by ICE FOIA" and the appeal was deemed moot. *See* Ex. F.

53. Moreover, an agency may not assess search or duplication fees if the agency fails to comply with any statutory time limit, if no unusual or exceptional circumstances (as those

terms are defined in the statute) apply to the processing of the request. 5 U.S.C. § 552(a)(4)(A)(vii).

54. AI Justice is independently entitled to obtain the requested records immediately at no cost due to Defendants' failure to respond to its FOIA request within the statutory time limit.

55. AI Justice is further entitled to reasonable costs of litigation, including attorneys' fees, pursuant to 5 U.S.C. § 552(a)(4)(E).

### **PRAYER FOR RELIEF**

Wherefore, plaintiff AI Justice respectfully requests that this Court:

- A. Assume jurisdiction over this matter;
- B. declare that Defendants' failure to respond to AI Justice's FOIA request and appeal within the statutory time limit violates FOIA;
- C. declare unlawful Defendants' failure to conduct a reasonable search for records responsive to AI Justice's FOIA request;
- D. declare that Defendants' failure to disclose such records violates FOIA;
- E. order Defendants, including any of their respective components, to conduct a reasonable search responsive to AI Justice's FOIA request;
- F. order Defendants to process immediately and expeditiously AI Justice's FOIA request, and to produce the requested records in their entirety without further delay;
- G. order Defendants to grant AI Justice's fee waiver and waive all fees associated with processing AI Justice's FOIA request;

- H. enjoin Defendants from withholding records responsive to AI Justice's FOIA request;
- I. award AI Justice reasonable attorneys' fees and other litigation costs in accordance with 5 U.S.C. § 552(a)(4)(E); and
- J. grant plaintiff AI Justice all further relief deemed just and proper.

Dated: March 26, 2019

Respectfully submitted,

s/Allison Norris

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